Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1995

LIQUIDATION COMMISSION FOR BCCI (OVERSEAS) LIMITED, MACAU,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a bank liquidator authorized by a sovereign foreign government is entitled to an evidentiary hearing to determine whether it can be equated with a criminal defendant for purposes of RICO's forfeiture provision?

2. Whether a separately chartered, capitalized and managed foreign bank, whose liability is limited under Macanese law, should be equated, under U.S. law, with criminal defendants who agreed to be bound by Macanese law?

3. Whether applying principles of international comity to follow the law of Macau in determining whether a bank liquidator may be equated with a criminal defendant for purposes of RICO's forfeiture provision undermines a federal statute?

LIST OF PARTIES

The parties to the proceeding are:

Petitioner:
LIQUIDATION COMMISSION for BCCI (OVERSEAS) LIMITED, MACAU.

Respondent:
UNITED STATES OF AMERICA.

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OPINIONS BELOW

The decision of the United States District Court for the District of Columbia (hereinafter, "District Court") granting Respondent's motion to dismiss a petition filed by Petitioner seeking adjudication of its interests in financial accounts forfeited pursuant to 18 U.S.C. § 1963 (l)*(2)* is reported at *U.S.v. BCCI Holdings (Luxembourg) S.A.*, 833 F. Supp. 32 (D.D.C. 1993). (App. E,1e-19e). The decision of the United States Court of Appeals for the District of Columbia Circuit (hereinafter, "Appellate Court") affirming the decision of the District Court is reported at *U.S. v. BCCI Holdings (Luxembourg), S.A.*, 48 F.3d 551 (D.C. Cir. 1995). (App. D, 1d-10d).

STATEMENT OF JURISDICTION

Petitioner brought this case in the District Court, pursuant to 18 U.S.C. § 1963 (l)(2). An order in Respondent's favor dismissing Petitioner's petition was entered by the District Court on August 19, 1993. (App E, 1e-19e). On October 29, 1993 the District Court entered final judgment against Petitioner and dismissed its petition. (App. F, 1f-6f). Petitioner filed a timely notice of appeal to the Appellate Court on October 29, 1995. Title 28 U.S.C. § 1291 provided federal appellate jurisdiction over the final judgment of the District Court. On March 3, 1995 the Appellate Court entered a judgment affirming the judgment of the District Court. (App. C, 1c-2c). Petitioner's motion for rehearing filed April 17, 1995 and Petitioner's suggestion for rehearing *In banc* also

filed April 17, 1995 were both denied on June 2, 1995. (respectively, App. B, 1b-2b, and App. A, 1a-2a). This Petition for Writ of Certiorari is timely filed within 90 days of June 2, 1995 by August 31, 1995.

STATUTES INVOLVED

The Racketeer Influenced and Corrupt Organization Act (hereinafter, "RICO") 18 U.S.C. § 1963(*l*)(2) provides:

(*l*)(l) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts

supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portion of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that-

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was

at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section; the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

STATEMENT OF THE CASE

A. Procedural History

Petitioner is the Liquidation Commission appointed by the Macanese Government to liquidate BCCI (Overseas) Limited, Macau. Pursuant to 18 U.S.C. § 1963 (*l*)(2), Petitioner filed a petition in the District Court asking the court to adjudicate Petitioner's interest in certain assets forfeited under RICO by four BCCI criminal defendants, BCCI Holdings (Luxembourg), S.A., Bank of Credit and Commerce International S.A., Bank of Credit and Commerce International, (Overseas) Limited, and International Credit and Investment Company (Overseas) Limited. (hereinafter, "BCCI Criminal Defendants). On August 19, 1993 the District Court dismissed the petition filed by Petitioner, the Liquidation Commission for BCCI (Overseas) Limited, Macau pursuant to 18 U.S.C. § 1963(*l*). The Appellate Court affirmed the dismissal of the petition on appeal. This Petition For Writ of Certiorari raises for review the Appellate Court's affirmance

of the dismissal of this petition.

B. Statement of Facts

In 1972, the four BCCI Criminal Defendants were chartered in the Cayman Islands and Luxembourg. In addition to the BCCI Criminal Defendants, international banking transactions were also conducted in 28 countries throughout the world by other foreign banking institutions under the "BCCI" name. Included among these banking institutions was BCCI (Overseas) Limited, Macau.

While BCCI (Overseas) Limited, Macau used the BCCI name in Macau, it was a juridical entity separate and distinct from the BCCI Criminal Defendants. It was created, capitalized and managed independently of the of the four BCCI Criminal Defendants. BCCI (Overseas) Limited, Macau, was required under Macanese law to be separately capitalized, separately managed, and separately licensed by the Macau Government. Petitioner was subject to Macanese laws and regulations which specifically prohibited, inter alia, assets booked with BCCI (Overseas) Limited, Macau from being used to meet obligations incurred abroad by BCCI banks including the BCCI Criminal Defendants.

In 1991, bank regulators in the Cayman Islands and Luxembourg jointly instituted a worldwide shutdown of the BCCI Criminal Defendants. Liquidators were appointed by courts in the Cayman Islands and Luxembourg to collect assets belonging to the BCCI Criminal Defendants and to distribute those assets to creditors and depositors worldwide. As a result of this situation, BCCI (Overseas) Limited, Macau was put under the control of the Government of Macau on

July 8, 1991. On April 8, 1992, the Government of Macau established Petitioner as a liquidation commission to protect the interests of the bank's depositors and creditors.

On December 9, 1991, the District Court handed down a criminal indictment charging the BCCI Criminal Defendants with, inter alia, violations of RICO. The indictment did not contain any reference whatsoever to BCCI (Overseas) Limited, Macau or to its liquidator, Petitioner. On January 24, 1992, the District Court accepted a guilty plea to the RICO charges made by the BCCI Criminal Defendants. BCCI (Overseas) Limited, Macau was not named as a defendant in the indictment, nor was Petitioner, its liquidator. Therefore neither was a party to the plea bargain agreement.

Under the plea bargain, the BCCI Criminal Defendants agreed to forfeit to the Government, pursuant to 18 U.S.C. § 1963, virtually all of their property located in the United States. Among the assets seized by the Government pursuant to this plea agreement were funds held in New York bank accounts under the name of BCCI (Overseas) Limited, Macau in excess of $1.6 million.

On April 12, 1992, Petitioner filed an action in the District Court to recover the forfeited assets pursuant to 18 U.S.C. § 1963(*l*). This petition included allegations that:

(1) under Macanese law, BCCI (Overseas) Limited, Macau was a separate juridical entity which had not been convicted of a RICO violation;

(2) under United States law, BCCI (Overseas) Limited, Macau was likewise a separate juridical entity that

had not been convicted of a RICO violation;

(3) BCCI (Overseas) Limited, Macau maintained separate books and records from the BCCI Criminal Defendants;

(4) BCCI (Overseas) Limited, Macau was not managed by the BCCI Criminal Defendants;

(5) there had been no showing that the BCCI (Overseas) Limited, Macau funds forfeited were the proceeds of racketeering activity.

On May 1, 1992, the Government moved to dismiss the petitions under Rule 12(b)(6) on the basis that Petitioner lacked standing to assert claims under 18 U.S.C. § 1963(*l*). The Government claimed that there was an identity of interest between the BCCI Criminal Defendants and Petitioner, that the BCCI Criminal Defendants held actual title to the property at issue, and that the local interests of Petitioner and Macau in having the issues decided pursuant to Macanese law were subordinate to the interests of the United States.

In opposing the Government' s motion to dismiss, the Petitioner argued that it was not a "defendant" within the meaning of RICO, because BCCI (Overseas) Limited, Macau, for which it is a liquidator, was a juridical entity, capitalized, and managed independently of the BCCI Criminal Defendants. Further, Petitioner argued that the law of Macau should be applied to the dispute, and that under this law, BCCI (Overseas) Limited, Macau was considered to be a separate juridical entity. In addition, Petitioner argued that under federal and state common law, the question of whether a

foreign bank is a separate entity is a complex question of fact which can only be resolved after a full evidentiary hearing. Finally, Petitioner contended that it would be inequitable to charge it with the criminal deeds of the BCCI Criminal Defendants by upholding the forfeiture if its assets were not derived from racketeering activities.

In reply, the Government proffered the affidavits of a single foreign lawyer with respect to the issue of the law in Macau.

At first, recognizing that there were substantial issues of fact and law to be decided in determining whether Petitioner, the Liquidation Commission for BCCI (Overseas) Limited, Macau, should be treated as a "defendant" under 18 U.S.C. § 1963(*l*), the District Court initially scheduled an evidentiary hearing in June, 1993. The Order setting the hearing specified that Petitioner would be given 45 to 60 minutes to present testimony in support of its case: both legal arguments and relevant factual evidence, including testimony and/or documentation relating to the nature of the relationship between the petitioner and Bank of Credit and Commerce International (Overseas) Limited.

(emphasis added).

Five days after this order was entered, the Government filed a motion *in limine* to exclude presentation of factual evidence and testimony on foreign law at the hearing on the grounds that such evidence was irrelevant to the court's resolution of its Motion to Dismiss. Despite opposition to the motion *in limine* by order dated May 27, 1993, the District Court granted the Government's motion *in limine*, precluding from the hearing the introduction of any factual evidence

regarding the relationship between Petitioner and the BCCI Criminal Defendants and any testimony regarding the content of foreign law because such testimony "may be more involved than the Court initially assumed." (emphasis added) The court also reduced the time petitioners would have to argue from 45-60 minutes to 20 minutes.

Oral argument on the Government's Motion to Dismiss was held on June 21, 22 and 23, 1993, more than one year after Petitioner filed its petition[1]. At the abbreviated, non-evidentiary hearing counsel for Petitioner was prohibited from putting into evidence any documents or testimony concerning foreign law. Nor were counsel permitted to elicit testimony from their client concerning the relationship between BCCI (Overseas) Limited, Macau and the BCCI criminal defendants.

By order dated August 19, 1993, the District Court granted the Government's motion to dismiss the petition by equating the Petitioner with BCCI (Overseas) Limited, Macau for which they served as liquidator and by applying federal common law -- and not Macanese law --to determine whether the foreign banks were juridical entities separate from the BCCI criminal defendants. (App. E, 1e-19e.). Final judgment on the order granting the Government's motion to dismiss was

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1. Pursuant to the RICO Statute, full evidentiary hearings on "L" claims are to be held, "to the extent practicable and consistent with the interests of justice,...within 30 days of the filing of the petition." 18 U.S.C. § 1963(*l*)(4). Due to the District Court's belated scheduling of a hearing, Petitioner was deprived of the opportunity to present its case for over a year. Moreover, when the hearing was finally held, it was less that the full evidentiary hearing called for by § 1963(*l*)(5).

entered on October 29, 1993. (App. F, 1f-6f).

On October 29, 1993, Petitioner filed a timely notice of appeal to the Appellate Court. On March 3, 1995 the Appellate Court affirmed the decision of the District Court holding that BCCI (Overseas) Limited, Macau did not have a separate legal identity apart from BCCI Criminal Defendants and therefore was not a party "other than the defendant" authorized to file petitions under Section 1963(*l*)(2). (App. D, 2d-4d). The Appellate Court also rejected Petitioner's arguments that, as a Macanese Government appointed bank liquidator, Petitioner was a separate entity from the bank it was liquidating, and that the law of Macau should be applied to determine whether BCCI (Overseas) Limited, Macau operated independently from the BCCI Criminal Defendants. (App. D, 5d-10d).

Petitioner filed this timely Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

THIS MATTER PRESENTS IMPORTANT ISSUES OF FEDERAL LAW WHICH HAVE NOT BEEN DECIDED BY THIS COURT AND ALSO PRESENTS A SPLIT OF AUTHORITY BETWEEN THE HIGHEST COURT OF A STATE AND THE FEDERAL CIRCUITS. ACCORDINGLY, THIS COURT, RESPECTFULLY, SHOULD EXERCISE ITS DISCRETIONARY POWER AND REVIEW THE DECISION BELOW.

This matter raises important, undecided questions of federal law concerning the due process rights afforded to a

liquidation commission established by a foreign government to marshall and distribute the assets of a former bank, as well as important issues of international comity. Moreover, as this Court has not yet addressed the issue of who is a "defendant" for purposes of the forfeiture provisions of RICO in this context, this matter also raises an issue of first impression. Additionally this matter lays bare a split of authority existing between the highest court of the State of New York and the Federal Circuits.

Specifically, this matter raises the issue of what rights, if any, are to be afforded to a liquidation commission established by the Government of Macau to marshall and distribute the assets of the former Macanese bank pursuant to a plea bargain between the Criminal Defendants and the U.S. Government.

Based on an alleged identity of interests between the Macanese Government's liquidation commission and the BCCI Criminal Defendants, the U.S. Government seized more than $1.6 million dollars belonging to the Macanese bank that had been held in various accounts in the United States pursuant to the forfeiture provisions of RICO. When the liquidation commission, in the course of marshalling the assets of the former bank to distribute them to creditors, petitioned to have these assets released pursuant to 18 U.S.C. § 1963(*l*)(2), the District Court, without allowing the evidentiary hearing required by law, dismissed the petition for an alleged lack of standing after equating the Macau Government's liquidation commission with the BCCI Criminal Defendants. On March 3, 1995 the Appellate Court upheld the dismissal based on three (3) apparent misconceptions: (1) the identity of the petitioning party; (2) the applicability of *Sokoloff v. National*

Bank of New York, 224 N.Y.S. 1202, 112 (Sup.Ct. 1927), *aff'd without opinion* 227 N.Y.S. 907 (N.Y. App. Div. 1928), *aff'd*, 164 N.E. 745 (N.Y. 1928), and subsequent cases, to the Case at bar, despite clear federal circuit precedent to the contrary; and (3) concerns about the uniform enforcement of state criminal laws. In doing so, the due process rights of the Macanese liquidation commission were completely ignored, and the Macanese creditors it represents as well as the liquidators of several other similarly situated banks that unknowingly became entangled in an international banking scandal.

Petitioner respectfully submits that the decision below also harms Macanese sovereignty as it thwarts Macau's efforts to protect creditors within its own territory. Thus, this matter raises important issues about international comity. It also sets a dangerous precedent for U.S. banks operating abroad, for if the reasoning of the appellate court were adopted by foreign tribunals, American banks, and their depositers would not only be denied "due process" rights, they would also risk being adjudged libel for the acts of foriegn affiliated banks.

In order to protect the due process rights of the Macanese liquidation commission and the Mecanese creditors, and in the interest of international comity as well as the foreign relations of the United States, and to avoid dangerous precedent which may adeversely affect the international banking system, this Court, respectfully, must exercise its discretionary power to review these important issues.

A. This Court, Respectfully, Should Decide The Important Issue Of Federal Law Of Whether Petitioner, The Macanese Liquidation Commission, Which Was

Appointed By the Macanese Government Should Be Equated, Under U.S. Law, With The Criminal Defendants Who Agreed To Be Bound By Macanese Law.

Both the District Court and the Appellate Court equated Petitioner, Macanese Liquidation Commission, with the BCCI Criminal defendants. Specifically, the Appellate Court found that Petitioner stands in the shoes of the bank it represents and enjoys the same rights and interests. (App. D, 7d). However, this finding only addresses half of the equation. While the Petitioner may have the same rights and interests as the former Macanese bank, it also owes a duty to depositors and creditors of the bank to marshall and distribute the former bank's assets. This duty which arises from Petitioner's appointment as a representative of the Macau government, distinguishes it from the former Macanese bank. Petitioner is, in fact, two steps removed from the BCCI Criminal Defendants, and simply cannot be equated with a "defendant" for purposes of 18 U.S.C. § 1963(*l*)(2). At a minimum it is entitled to due process, through a proscribed evidentiary hearing to demonstrate its legal interest in the funds at issue. *See U.S. v. Kramer*, 912 F.2d 1257, 1258 & n.1 (11th Cir. 1990).

Thus, without affording it a full due process hearing--as required--it was error to equate the Macanese Liquidation Commission with the Macanese bank itself as, although it may possess the same rights and interests as the bank, the duty it owes to depositors and creditors clearly distinguishes it from the former bank itself. At a minimum, Petitioner is, respectfully, entitled to an evidentiary hearing to demonstrate its legal interest in the funds at issue. *See Kramer*, 912 F.2d at 1258 & n.1.

B. This Court, Respectfully, Should Decide The Important Issue Of Federal Law Of Whether A Separately Chartered, Capitalized And Managed Foreign Bank, Whose Liability Is Limited Under Macanese Law, Should Be Equated, Under U.S. Law, With The Criminal Defendants.

Even assuming that it was not error to equate the Macau Liquidation Commission with the former Macanese bank, Petitioner respectfully submits that This Court should decide the important issue of federal law of whether a separately chartered, capitalized and managed foreign bank, whose liability is limited under Macanese law, should be equated with the BCCI Criminal Defendants.

Under the federal common law established in *Sokoloff v. National City Bank of New York*, 130 Misc. 66, 73 224 N.Y.S. 102, 114 (Sup. Ct. 1927), *aff'd. mem.*, 223 App. Div. 754, 227 N.Y.C. 907, *aff'd.*, 250 N.Y. 69, 164 N.E. 745 (1928) and the line of cases that followed, where a depositor makes a deposit in a foreign branch of a U.S. bank and the branch is subsequently closed or in default, the parent bank can, nonetheless, be held liable for the debt.[2] However, this is not a case where the issue is whether a "home office" of an international bank should be held liable for the debts of

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2. *See e.g., Edelmann v. Chase Manhattan Bank, N.A.*, 861 F.2d 1291, 1303-04 (1st Cir. 1988); *Vishipco Line v. Chase Manhattan Bank, N.A.*, 660 F.2d 854, 863 (2d Cir. 1981), *cert. denied* 459 U.S. 976 (1982); *First Nat'l. Bank of Boston (Int'l.) v. Banco Nacional de Cuba*, 658 F.2d 895, 900 (2d Cir. 1981), *cert. denied*, 459 U.S. 1091 (1982); *Trinh v. Citibank, N.A.*, 850 F.2d 1164, 1168 (2d Cir. 1988), *cert. denied*, 496 U.S. 912 (1990).

affiliated foreign banks that have closed or are in default. Consequently, since liability for an obligation owed to a depositor is not an issue, the holdings of the *Sokoloff* line of cases are unsuited to the facts of this case.

Moreover, *Sokoloff*, is in direct conflict with a line of federal decisions holding that a branch bank is not a mere "teller's window," but a separate business entity. *Pan-American Bank & Trust Co. v. National City Bank*, 6 F.2d 762, 767 (2d Cir. 1925), *cert. denied*, 259 U.S. 554 (1925). Accordingly, petitioner requests that this Court respectfully resolve the conflict.

Under federal common law, branch banks often have been considered to be separate entities from their parent banks. *See, e.g., Banco Nacional de Cuba v. Chase Manhattan Bank*, 505 F. Supp. 412, 444 (S.D.N.Y. 1980), *modified on other grounds*, 658 F.2d 825 (2d Cir. 1981) (branches of Chase Manhattan Bank and Citibank treated as independent entities for valuation purposes); *Det Bergenske Dampkibsselskab v. Sabre Shipping Corp.*, 341 F.2d 50, 53 (2d Cir. 1965) (an attempted foreign attachment of a bank account at a New York branch office was ineffective; "a branch bank is a separate and distinct business entity"); *Republic of China v. National City Bank of New York*, 208 F.2d 627, 630-31 (2d Cir. 1953), *rev'd. on other grounds*, 348 U.S. 356 (1955) ("a national bank and each of its foreign branches are separate entities, to be treated as if they were unrelated banks with respect to the business done between them and for many other purposes"); *Marlboro Trust Co. v. Elliot*, 86 F.2d 315, 316 (4th Cir. 1936) ("branches of the same bank are to be treated just as though they were

independent banks" for purposes of collection on checks).[3]

Moreover, the holding in *Sokoloff* was specifically limited to its facts in *McGrath, Attorney General v. Agency of Chartered Bank of India*, 104 F. Supp. 964, 968 (S.D.N.Y. 1952), *aff'd.*, 201 F.2d 368 (2d Cir. 1953), as follows:

> [*Sokoloff*] is authority merely for the principle that in factual situations as presented in that case the various branches will be considered a part of a single corporation. It does not stand for the principle that in every instance an international bank with branches is but one legal entity for all purposes . . . . [T]here are purposes for which the various agencies and branches of Chartered Bank may be treated in law as separate entities. I fail to see the applicability of *Sokoloff* either as a guide to or authority for resolution of this problem. The facts before me and the cases catalogued supra lend weight to the view that we are dealing here with Agencies independent of one another.

Id. at 968 (emphasis in original).*See also, U.S. v. Harvey*,63 AFTR 2d (P-H) 89-1236, ¶ 89-538 (S.D.Fla. 1989) (at a minimum, allegations regarding the affiliation between branch

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3. State courts in New York, where the *Sokoloff* line of cases originated, have reached similarly opposite findings. *See, e.g., Clinton Trust Co. v. Compania Azucarera Central Maboy S.A.*, 14 N.Y.S.2d 743 (1939) (accounts deposited in a branch in Cuba not considered property of a bank located in New York).

banks and their foreign parents raise an issue of fact requiring an evidentiary hearing. Importantly, this case involved BCCI)

Thus, Petitioner respectfully submits that, at a minimum, an evidentiary hearing is necessary to inquire into whether, under the law of Macau, the former Macanese bank should be treated as an entity separate from the BCCI Criminal Defendants and whether the particular assets as issue were properly forfeited where: (a) the deposits of the Macau bank were negotiated in bilateral contractual agreements between the Macau bank and the corresponding U.S. banks ; (b) these deposits could only be withdrawn by the same Macau bank after disclosure of the appropriate test keys; (c) under Macau law, assets booked in a Macanese affiliate of a foreign bank, such as the BCCI Criminal Defendants, may neither be used to meet obligations of the foreign bank incurred abroad, nor may foreign judgment of bankruptcy or liquidation against the foreign bank be enforced in Macau before all obligations contracted in Macau have been satisfied; and (d) under Macau law, should the foreign bank fail, local creditors are entitled to funds booked in the Macanese affiliate, not creditors of the home-office. Because the BCCI Criminal Defendants had to agree to submit to the law of the respective foreign jurisdictions as a condition for establishing affiliated foreign banks and it is that law which determines whose right, title and/or interest is superior, *See Vishipco Line*, 660 F.2d at 859, Petitioner respectfully submits that, under these conditions, forfeiture was not appropriate.

C. Whether Application of the Law of Macau Would Undermine a Federal Statute, Respectfully, Should Be Decided By This Court?

The Appellate Court found that penal statutes should be uniformly enforced, without regard to the vagaries of state law. *See U.S. v. BCCI Holdings (Luxembourg), S.A.*,48 F.3d 551, 554 (D.C. Cir. 1995). Moreover, the Appellate Court determined that the purpose of this policy was to ensure that "identically situated parties" do not receive arbitrarily different treatment under the same statutory scheme. *Id.*

Petitioner respectfully submits, however, that rejection of Macanese law based on this conclusion is inappropriate and raises important issues of federal law because it is precisely the question of whether Petitioner is to be situated with the BCCI Criminal Defendants that is at issue. If Petitioner were a wholly owned subsidiary incorporated in a different state, then the District Court would have properly looked to the law of the state in which the subsidiary was incorporated for guidance in determining whether to hold the subsidiary liable for the acts of its parent. *Futurology Impex Corp. v. International Trade Group, Inc.*, 1987 WL 42086 (E.D.N.Y. Dec. 19, 1987). The inquiry here should be no different simply because international banks generally operate in foreign countries through separately chartered, capitalized and managed banks licensed by and subject to the laws of the particular jurisdiction in which they operate. Peter S. Smedresman & Andreas F. Lowenfeld, *Eurodollars, Multinational Banks, and National Laws*, 64 *N.Y.U. L. Rev.*, 733, 741 (1989).

Moreover, the Appellate Court's approach does not, respectfully, take into consideration the unique, international aspect of this particular matter and the concerns of international comity it raises. Petitioner is not requesting that the criminal laws of the United States be ignored. Rather, Petitioner is requesting that This Court recognize that the Macanese Government -- a foreign sovereign in its own right -- has taken legal action of its own to protect its local depositors and creditors and that principles of international comity require that the legislative, executive or judicial acts of another sovereign nation should be followed. *Hilton v. Guyot*, 159 U.S. 113, 164 (1895); *Societe Nationale Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522, 543 n. 27 (1987). The appointment of Petitioners by their respective foreign governments is, respectfully, exactly the type of act by a foreign sovereign that must, respectfully, be recognized and respected under the principles of international comity. *Aerospatiale*, 482 U.S. 543 n. 27; *Hilton*, 159 U.S. at 164. However, the U.S. Government's seizure of the accounts at issue and the District Court's and the Appellate Court's rejection of the Liquidation Commission's petition by equating it with the BCCI Criminal Defendants, has frustrated Petitioner's ability to carry out its assigned duties as liquidator of the foreign bank at issue, and, thus, violates principals of international comity and does harm to the international legal system as a whole by thwarting the acts of a foreign sovereign.

CONCLUSION

Petitioner respectfully submits, that, because of the important issues of federal law, the apparent conflict between prior decisions of United States Courts of Appeal,

and a state court of last resort, *Sokoloff v. National City Bank of New York*, 130 Misc. 66, 73 224 N.Y.S. 102, 114 (Sup. Ct. 1927), *aff'd. mem.*, 223 App. Div. 754, 227 N.Y.C. 907, *aff'd.*, 250 N.Y. 69, 164 N.E. 745 (1928), concerns of due process and international comity, raised by this matter, and because these important issues present a case of first impression, never before decided by this Court, which case will affect the international banking system, of which American banks are an integral part, that This Court exercise its discretionary power and issue a writ of certiorari.

Dated: August 31, 1995

Respectfully submitted,

Larry Klayman, Esq.
KLAYMAN & ASSOCIATES
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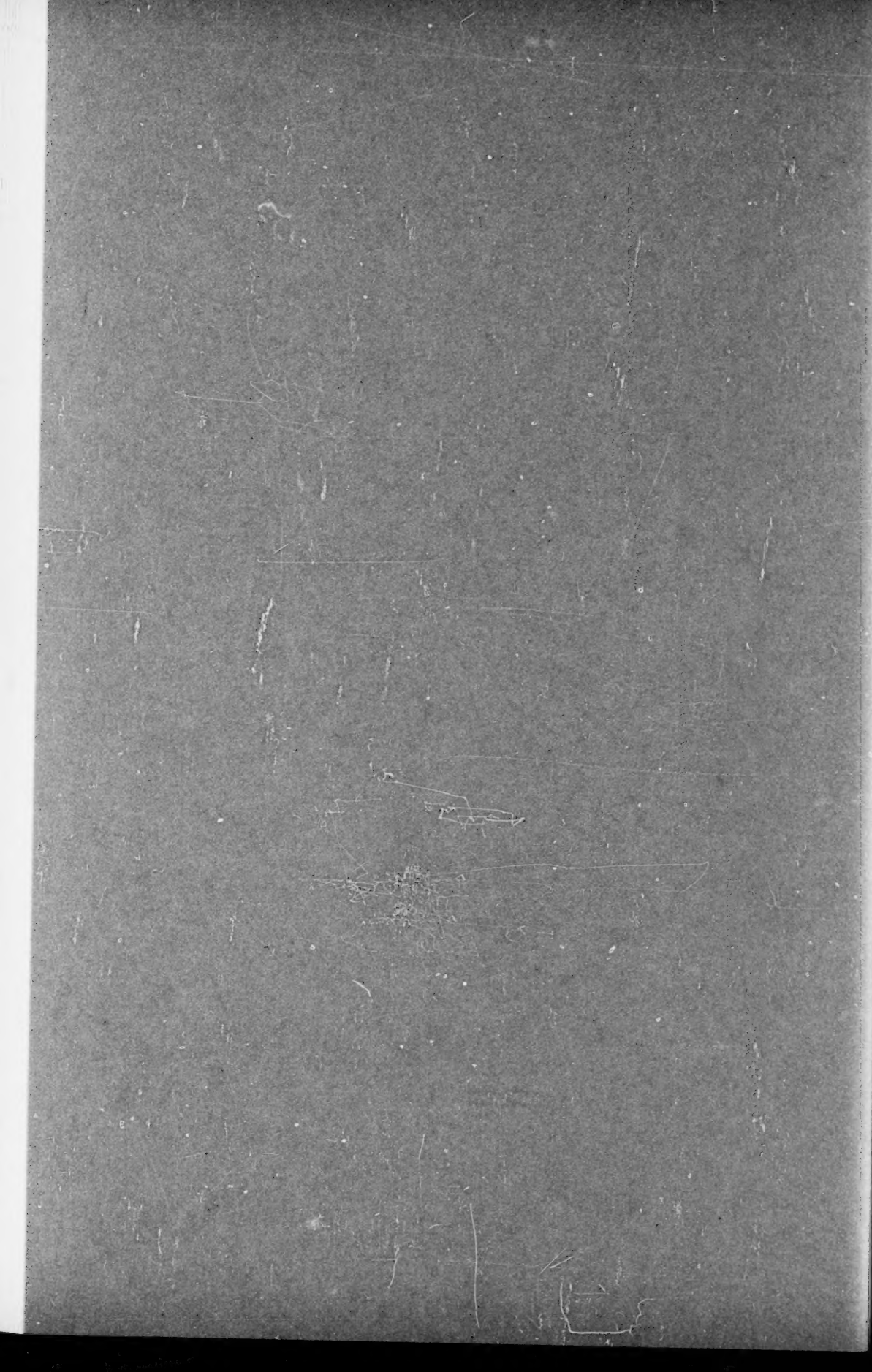
Washington, D.C. 20024
(202) 646-5160



APPENDIX A - JUNE 2, 1995 UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT ORDER DENYING SUGGESTION FOR REHEARING IN BANC

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 93-5297

CV 91-0655

UNITED STATES OF AMERICA,

Appellee,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., et al.,

Appellants.

---

and Consolidated Cases No. 93-5298 and 93-5347

On Appeal From The United States Court District Court
For The District Of Columbia

BEFORE: EDWARDS, Chief Judge; WALD, SILBERMAN, BUCKLEY, WILLIAMS, GINSBURG, SENTELLE, HENDERSON, RANDOLPH, ROGERS, TATEL, Circuit Judges.

BY THE COURT:

The Suggestion For Rehearing In Banc of appellant in No. 93-5347 has been circulated to the full Court. No member of the Court requested the taking of a vote thereon. Upon consideration of the foregoing, it is

ORDERED, by the Court in banc, that the suggestion is denied.

Per Curiam

Entered: June 2, 1995
For the Court: Mark J. Langer, Clerk

By: /s/ Robert A. Bonner
Deputy Clerk

Circuit Judge Wald did not participate in this matter.

APPENDIX B - JUNE 2, 1995 UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT ORDER DENYING PETITION FOR REHEARING

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 93-5297

CV 91-0655

UNITED STATES OF AMERICA,

Appellees,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., et al.,

Appellants.

---

and Consolidated Cases No. 93-5298 and 93-5347

On Appeal from the United States District Court for the District of Columbia

BEFORE: SILBERMAN, HENDERSON and RANDOLPH, Circuit Judges

BY THE COURT:

Upon consideration of the petition for Rehearing of appellant in No. 93-5347, filed April 17, 1995, it is

ORDERED, by the court, that the petition is denied.

Per Curiam

Entered: June 2, 1995
For the Court: Mark J. Langer, Clerk

By: /s/ Robert A. Bonner
Deputy Clerk

APPENDIX C - MARCH 3, 1995 JUDGMENT AND JUNE 14, 1995 MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 93-5297

CV 91-0655

UNITED STATES OF AMERICA,

Appellees,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., et al.,

Appellants.

---

and Consolidated Cases No. 93-5298 and 93-5347

Appeals from the United States District Court for the District of Columbia

BEFORE: SILBERMAN, HENDERSON, and RANDOLPH, Circuit Judges

JUDGEMENT

These causes came on to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel. On consideration thereof, it is

ORDERED and ADJUDGED, by the Court, that the judgement of the District Court appealed from in these causes is hereby affirmed, in accordance with the Opinion for the Court filed herein this date.

Entered: March 3, 1995
For the Court: Mark J. Langer, Clerk

By: /s/ Robert A. Bonner
Deputy Clerk

Opinion for the Court filed by Circuit Judge Henderson.

ISSUED AND MANDATED: 6/14/95

APPENDIX D - APPELLATE COURT DECISION, 48 F. 3d 552 DISTRICT OF COLUMBIA CIRCUIT

United States Court Of Appeals
For The District of Columbia

No. 93-5297

UNITED STATES OF AMERICA,

Appellee,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., et al.,

Appellees,

BANCO CENTRAL DEL PARAGUAY,

Petitioner-Appellant,

No. 93-5298

UNITED STATES OF AMERICA,

Appellee.

v.

2d

BCCI HOLDINGS (LUXEMBOURG), S.A., et al.,

Appellees,

ABDULLAH SOYDAS, AS LIQUIDATOR OF BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LTD., ISTANBUL, IZMIR AND MERSIN, TURKEY,

Appellant.

No. 93-5347

UNITED STATES OF AMERICA,

Appellee,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., et al.,

Appellees,

THE LIQUIDATION COMMISSION FOR BCCI (OVERSEAS) LTD., MACAU BRANCH,

Appellant.

Appeal from the United States District Court
for the District of Columbia
(91cv0655)

Argued November 23, 1994
Decided March 3, 1995

For Appellants: LARRY KLAYMAN, on brief was ALLEN LESCHT. WAYNE S. BISHOP also entered an appearance.

For Appellees: LLOYD H. RANDOLPH, ATTY., DEPT. OF JUSTICE, on brief were ERIC H. HOLDER, JR., U.S. ATTY., and ROBERT D. SHARP, STEFAN D. CASSELLA and JAMES C. KOHN, ATTYS., DEPT. OF JUSTICE.

Opinion by: Hon. Karen LeCraft Henderson

The appellants are liquidators for the Paraguayan, Turkish and Macanese branches of the Bank of Credit and Commerce International (Overseas) Limited (BCCI Overseas). Each liquidator appeals the district court's dismissal of its petition under 18 U.S.C. § 1963 (l)(2) for adjudication of its interests in financial accounts located in this country and ordered forfeited pursuant to 18 U.S.C. § 1963 and to its parent bank's pleas agreement. The district court held that the branches lacked statutory standing to file the petitions because they are not parties "other than" defendant BCCI Overseas, as required under section 1963 (l)(2). We affirm that dismissal.[1]

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1 Because the appellants lack standing to file a section 1963(l)(2) petition, we do not address their contentions that they are entitled to a hearing on their petitions and that certain assets are not subject to forfeiture under section 1963.

On January 24, 1992 the district court accepted pleas of guilty on behalf of BCCI Overseas and three related banking entities [2] on charges of violating the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (RICO). The same day the court entered an order under 18 U.S.C. § 1963, pursuant to a plea agreement, requiring that the same four entities forfeit to the United States their interests in any property located in this country except for assets transferred here by court-appointed liquidators in the course of liquidation.[3] The Government then published notice of the forfeiture order in eleven major American newspapers and sent individual notices to over 340 entities, in compliance with 18 U.S.C. § 1963(l)(1).[4] In response, various parties representing bank branches and depositors, including the

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[2] They are BCCI Holdings (Luxembourg), S.A.; Bank of Credit and Commerce International, S.A.; and International Credit and Investment Company (Overseas) Limited.

[3] For a more detailed account of the events leading up to the forfeiture order, see *United States v. BCCI Holdings (Luxembourg), S.A.*, No. 93-5296 (D.C. Cir. Feb. 14, 1995).

[4] The subsection provides:

> Following entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

18 U.S.C. § 1963(l)(1).

appellant liquidators, filed petitions to establish their interests in forfeited assets pursuant to 18 U.S.C. § 1963(l)(2). By order filed August 19, 1993 the district court dismissed the petitions on the ground that the branches of BCCI Overseas failed to satisfy section 1963(l)(2)'s threshold standing requirement that a petitioner be a party "other than the defendant."[5] We agree with that disposition. Our courts have long recognized that, while individual bank branches may be treated as independent of one another, each branch, unless separately incorporated, must be viewed as a part of the parent bank rather than as an independent entity. In 1927, then Judge Cardozo wrote of bank branches:

> [W]hen considered with relation to the parent bank, they are not independent agencies; they are, what their name imports, merely branches, and are subject to the supervision and control

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[5] The subsection provides in full:

> Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

18 U.S.C. § 1963(l)(2). Subsection (l)(6) provides that if the court determines after the hearing that a petitioner had at the time of the illegal activity an interest in forfeited property superior to the defendant's or subsequently acquired property as a bona fide purchaser, it is to amend the forfeiture order accordingly.

> of the parent bank, and are instrumentalities whereby the parent bank carries on its business, and are established for its own particular purposes, and their business conduct and policies are controlled by the parent bank, and their property and assets belong to other parent bank, although nominally held in the names of the particular branches.

Sokoloff v. National City Bank of N.Y., 224 N.Y.S. 102, 114 (Sup. Ct. 1927), *aff'd without opinion*, 227 N.Y.S. 907 (N.Y. App. Div. 1928), *aff'd*, 164 N.E. 745 (N.Y. 1928). Relying on the *Sokoloff* rule that a branch is a mere component of its parent, federal courts have repeatedly held parent banks accountable for the debts of their branches. *See, e.g., Edelmann v. Chase Manhattan Bank, N.A.*, 861 F.2d 1291, 1303-04 (1st Cir. 1988); *Vishipco Line v. Chase Manhattan Bank, N.A.*, 660 F.2d 854, 863 (2d Cir. 1981), *cert. denied*, 459 U.S. 976 (1982); *First Nat'l Bank of Boston (Intl) v. Banco Nacional de Cuba*, 658 F.2d 895, 900 (2d Cir. 1981), *cert. denied*, 459 U.S. 1091 (1982); *Trinh v. Citibank, N.A.*, 850 F.2d 1164, 1168 (6th Cir. 1988), cert denied, 496 U.S. 912 (1990).[6] We find that rule, which has become a part of

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[6] Authority cited by the appellants to support the independent status of branch banks is inapposite here. The cited cases merely treat branches like independent banks in discrete, narrow contexts unrelated to the branches' juridical status and often involving transactions between the bank and its branch. *See Det Bergenske Dampskibsselskab v. Sabre Shipping Corp.*, 341 F.2d 50, 53-54 (2d Cir. 1965) (foreign branch separate from parent for determinig jurisdction to attach its assets; *Repbulic of China v. National City Bank of N.Y.*, 208 F.2d 627 (2d Cir. 1953) (sovereign nation's debt to foreign branch of domestic parent banks is "separate" from domestic transaction with parent so that suit by foreign soveregin to recover on the latter does not waive its soveregin immunity

our federal common law, to be controlling here. Accordingly, we conclude that the branches represented by the appellants have no separate legal identity apart from their parent, defendant BCCI Overseas, and therefore are not parties "other than the defendant" authorized to file petitions under section 1963 (l)(2). Nevertheless, the appellants argue we should ignore the Sokoloff rule for two reasons. We find neither persuasive.

First, the appellants assert that, as legally authorized liquidators, they have interests separate from the institutions they represent and therefore from the four BCCI defendants as well. A bank liquidator, however, stands in the shoes of the bank it represents and enjoys precisely the same rights and interests. *Trigo v. FDIC*, 847 F.2d 1499, 1501 (11th Cir. 1988); *FDIC v. Glickman*, 450 F.2d 416, 418 (9th Cir. 1971); *Commonwealth ex rel. Sheppard v. Central Penn Nat'l Bank*, 375 A.2d 874, 877 (Pa. Commw. Ct. 1977) (citing *Commonwealth ex rel. Kelly v Commonwealth Mutual Ins. Co.*, 299 A.2d 604, 606 (Pa. 1973); *In re International Milling Co.*, 181 N.E. 54, 56 (N.Y. 1932); *Hammons v. Grant*, 225 P. 485, 486-87 (Ariz. 1924). Thus, in their

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from suit based on the former); *Marlboro Trust Co. v. Ellliott*, 86 F.2d 315, 316-17 (4th Cir. 1936) (check drawn on distant branch accorded same preferential status under South Carolina codification of Uniform Collection Code as one drawn upon another bank); *Pan-American Bank & Trust Co. v. National City Bank of N.Y.*, 6 F.2d 762, 767 (2d Cir.) (branch treated same as independent bank when presenting paper to parent bank), *cert. denied*, 269 U.S. 554 (1925); *Banco Nacional de Cuba v. Chase Manhattan Bank*, 505 F. Supp. 412, 444 (S.D.N.Y. 1980) (branch separate from parent for "value-related purposes"), *modified in other respects*, 658 F.2d 875 (2d Cir. 1981).

capacities as branch liquidators the appellants have no more standing to file the petitions than do the branches they represent.

Second, the appellants contend we should apply the law of each branch's domicile rather than the federal common-law rule derived from *Sokoloff* to determine whether that branch operates independently from its parent bank. In so urging, the appellants rely on the principle that a federal court should apply the law of the jurisdiction with the "greatest interest" in the litigation and its outcome, which in this case, they maintain, is the domicile of the depositors who will suffer financial loss as a result of the forfeiture. This argument ignores the obvious; the depositors stand to lose no more if the assets are forfeited than the United States will lose if they are not. In any event, we believe precedent dictates that United States federal common law govern the forfeiture of assets located within its borders and acquired or maintained in the course of racketeering activities that violate its statutes.

The Supreme Court has repeatedly held that federal penal statutes should be uniformly enforced, without regard to the vagaries of state law, unless Congress has revealed a clear intent to the contrary. *See e.g., Taylor v. United States*, 495 U.S. 575 (1990) (refusing to adopt state definitions of "burglary" in applying federal sentencing enhancement statute); *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 118-21 (1983) (subjecting individual to federal statute's firearms disability despite state law "expunction" of his felony guilty pleas); *United States v. Turley*, 352 U.S. 407, 410-11 (1957) (rejecting state law definitions of "stolen" in construing the National Motor Vehicle Theft Act). The reason for this policy is clear: identically situated parties should not

arbitrarily receive different treatment under the same federal statutory scheme. *See Taylor*, 495 U.S. at 591 (noting that if individual state definitions of burglary were accepted "a person imprudent enough to shoplift or steal from an automobile in California would be found . . . to have committed a burglary constituting a 'violent felony' for enhancement purposes - yet a person who did so in Michigan might not" and declining to 'interpret Congress' omission of a definition of 'burglary' in a way that leads to odd results of this kind.") (citing *Dickerson*, 460 U.S. at 119-120; *Turley*, 352 U.S. at 411). The same reasoning governs here. The language of RICO itself shows Congress intended consistent and uniform enforcement of the forfeiture provisions, without regard to local law. *See* 18 U.S.C. § 1963(a) (requiring forfeiture of eligible assets "irrespective of any provision of State Law"). To construe section 1963(l)(2) in light of the divergent laws of foreign nations would frustrate that intent and we decline to do so. Accordingly, we apply the federal common-law rule and treat the bank branches as components of their parent defendant bank.

For the preceding reasons, we conclude that the appellants lack standing to file petitions under 18 U.S.C. § 1963(l)(2). To the extent that the forfeitures may work a hardship on the bank branches or their depositors, the "appropriate ex[cl]usive remedy" is to seek equitable relief from the Attorney General under 18 U.S.C. § 1963(g)(1).[7]

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[7] That section authorizes the Attorney General to "grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interests of justice and which is not inconsistent with the provisions of [RICO]."

United States v. BCCI Holdings (Luxembourg), S.A., No. 93-5296 (D.C. Cir. Feb. 14, 1995) (quoting S.Rep No. 225, 98th Cong., 2d Sess. 208)). Accordingly, the decision of the district court dismissing the petitions is

Affirmed.

APPENDIX E - DISTRICT COURT DECISION, 833 F. SUPP. 32 DISTRICT OF COLUMBIA CIRCUIT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 91-0655

UNITED STATES OF AMERICA,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., ET AL.,

Presently pending are the United States' motions to dismiss the petitions for hearings to adjudicate interests in forfeited property filed by **The Central Bank of Paraguay** ("Paraguayan branch"), **Raymond Davies on behalf of all BCCI depositors in Sierra Leone** ("Davies"), **Carlos F. Sanchez Fabrega as Liquidator of BCCI (Overseas) Limited (en Liquidacion) in Panama**[1] (Panamanian branch"), **Andre Forde and Michel Chavaux, Administrators of BCCI (Overseas) Limited in France and Monaco** (" French branch), **The Government of the People's Republic of Bangladesh and**

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[1] Mr. Fabrega was subsequently replaced by Edgardo Sigfredo Lasso Valdes as the liquidator of the Panamanian branch.

Bangladesh Bank[2] ("Bangladesh"), **Hussein Abdel Rahim *et al.*, Joint Official Liquidators for BCCI (Overseas) Limited, Sudan** ("Sudanese Branch"), **Antonio dos Santos Ramos and Antonio Maria Ho as the Liquidation Commission for BCCI (Overseas) Limited, Macau Branch**[3] ("Macanese branch"), and **Abdullah Soydas, as Liquidator of BCCI (Overseas) Limited, Istanbul, Izmir and Mersin, Turkey** ("Turkish branch").[4] Upon consideration of the motions to dismiss, all filings relating thereto, and oral argument presented at the June 22 and 23, 1993 hearings, the motions to dismiss the petition as filed by branches of BCCI (Overseas) Limited are granted and the motions to dismiss the petitions filed by Bangladesh are denied.

BACKGROUND

On July 5, 1991, bank regulators in the principal

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[2] Because Bangladesh Bank asserts interestS in forfeited property as an agent of the Government of the People's Republic of Bangladesh, those two petitioners will be treated as one entity for the purpose of resolving the government's motions to dismiss.

[3] Dr. Ramos and Mr. Ho were subsequently replaced by Antonio Correia.

[4] Although the government filed a motion to dismiss the petition filed by the State Bank of India on behalf of the Bombay branch of BCCI (Overseas), resolution of the motion has been temporarily stayed at the request of the petitioner in light of ongoing settlement attempts. *See* June 18, 1993 Order Granting Request for Adjournment; July 20, 1993 Order Granting Further Adjournment. A petition filed by another branch of BCCI (Overseas), the Jamaican branch, was voluntarily withdrawn in June 1993.

jurisdictions in which the four corporate defendants[5] were organized or did business jointly instituted a worldwide shutdown of the banks upon the belief that they were insolvent and had engaged in numerous criminal activities. Subsequently, courts in the respective domiciles of the defendants appointed liquidators to collect all BCCI assets located throughout the world and to distribute the assets to lawful creditors and depositors of BCCI on a global basis.

On January 24, 1992, this Court, following findings of fact and conclusions of law with supporting reasons made in open court, accepted the pleas of guilty of made by the court-appointed liquidators on behalf of the BCCI entities and the plea agreement between them and the United States of America. Thereupon, and in accordance with 18 U.S.C. § 1963, an Order of Forfeiture was entered. Paragraph 1(e) of the Order provides that the corporate defendants named in this action shall forfeit to the United States ownership interests in all property located in the United States, including, without limitation, real property and all tangible and intangible personal property, however held, whether subsequently identified, determined or discovered in the course of the ongoing liquidation proceedings described therein or otherwise identified, determined, or discovered in any manner at any time, but not property that may be brought into the United States by or on behalf of court-appointed fiduciaries of BCCI in

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[5] The four corporate defendants are BCCI Holdings (Luxembourg), S.A., incorporated under the laws of Luxembourg; Bank of Credit and Commerce International, S.A., incorporated under the laws of Luxembourg; Bank of Credit and Commerce International (Overseas) Limited ("BCCI Overseas") incorporated under the laws of the Cayman Islands; and International Credit and Investment Company (Overseas) Limited, incorporated under the laws of the Cayman Islands. The four entities are collectively referred to as "BCCI."

the course of the management or disbursement of the liquidation estates as described in the plea agreement. Attached to the January 24, 1992 Order as Exhibit A was a list of specific BCCI accounts, with corresponding numbers, names, and approximate balances, which the United States Marshals Service was directed to seize forthwith. Because the government was unable to verify certain information concerning additional forfeitable accounts at the time the Order of Forfeiture was entered, the Court issued a supplemental Order on January 31, 1992 which directed immediate seizure of the specific assets listed therein. In accordance with the plea agreement, approximately half of the forfeited funds will be placed in a Worldwide Victims and Creditors Compensation Fund maintained by the court-appointed liquidators of the corporate defendants. The remaining half will be used by the United States to reimburse federal banking agencies' insurance funds and to minimize the risk of loss arising from BCCI's illegal acquisitions of certain Untied States banks.

In satisfaction of 18 U.S.C. § 1963(*l*)(1), and to inform third parties of potential rights to seek recovery of assets declared forfeited,
the United States published notice of the Order of Forfeiture, as amended, during the period between February 13, 1992 and March 27, 1992 in eleven major United States newspapers including the *Wall Street Journal,* the *New York Times,* the *Chicago Tribune* and the *Los Angeles Daily Journal*. *See* Governments' Compliance with Order of May 8, 1992, filed May 12, 1992. In addition, personal notice was sent to over 340 persons and entities as late as April 3, 1992. *Id.*

On March 19, 1992, the French, Panamanian, and Paraguayan branches of BCCI Overseas filed separate petitions seeking the return of funds forfeited from accounts held in their

names at institutions in New York. Although all three concede that they were not separately incorporated, they claim to be separate juridical entities under the laws of their domiciles. Accordingly, the branches argue that they are third parties to this litigation, that they are not bound by the plea agreement entered by their parent, and that funds held in their name were not owned by BCCI Overseas and cannot be forfeited absent specific proof tracing the assets to illegal activities. The Macanese, Sudanese, and Turkish branches filed similar petitions on April 12, 1992, May 11, 1992, and June 10, 1992 respectively.

Unlike the above-mentioned petitions, the April 27, 1992 and April 3, 1992 claims of Raymond Davies and Bangladesh were not filed on behalf of branches of BCCI Overseas; Davies' petition was filed on behalf of all depositors of the Sierra Leonean branch and Bangladesh's petition was submitted on behalf of the sovereign nation itself. Bangladesh seeks to recover the funds held in branch accounts based on allegations that it had the right to hold all foreign exchange acquired by the branches, that the branches could not dispose of foreign exchange without its express permission, and that the branches have not received such permission with respect to the forfeited assets.

In accordance with a briefing schedule set by the Court, the government filed motions to dismiss the petitions based on theories that as mere branches of one of the corporate defendants, none of the claimants had standing to appear before this Court and that none of the petitioners could satisfy the substantive prerequisites for court-ordered relief. Additionally, the government contended that the Paraguayan branch's petition was defective because it sought to recover an interest in assets which were not yet seized. The government further contended that no petition filed by a

liquidator, including the claim filed by Mr. Davies, could assert derivative claims of depositors and that the petitions of the Sudanese and Turkish branches were filed out of time.

On June 24, 1992, the government filed a Motion to Amend Order of Forfeiture to Include Additional Property, seeking forfeiture and seizure of assets in newly discovered bank accounts held in the names of the corporate defendants, proceeds from the sale of a condominium purchased with resources provided by a corporate defendant, money remaining in a "BCCI Legal Fund" established by one of the corporate defendants for the defense of its employees' legal interests, a bankruptcy distribution to one of the corporate defendants, and assets held at various New York financial institutions in the name of ICIC Investments Ltd., a sibling corporation of defendants ICIC (Overseas) Ltd. The Court granted the government's motion and issued an Order of Forfeiture on July 29, 1992. The United States subsequently provided notice of the Order to potential claimants.[6]

In response to the July 1992 Order of Forfeiture, Bangladesh filed a second petition asserting interests in newly forfeited and seized property held in the names of Bangladesh branches of BCCI Overseas. The government subsequently filed a motion to dismiss Bangladesh's new petition, which became ripe on June 18, 1993. Although the new
Order of Forfeiture also directed the seizure of property held in the name of the Paraguayan branch, that branch failed to file a second petition in response to the Order and apparently believed that its first petition sufficiently raised a claim to those assets.

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[6] Over 100 petitions to amend the two Orders of Forfeiture have been filed as of this date.

Hearings on the government's motions to dismiss what the government termed the "branch petitions" were scheduled in a May 12, 1992 Order which provided, "The litigants shall be prepared to present both legal arguments and relevant factual evidence, including testimony and /or documentation relating to the nature of the relationship between the petitioners and Bank of Credit and Commerce International (Overseas) Limited." Five days later, the government filed a motion *in limine* seeking an Order excluding the presentation of, *inter alia*, factual evidence and testimony of foreign law. The government claimed that such evidence and testimony were irrelevant to resolution of the motions to dismiss. After considering opposition filed by some of the petitioners, the government's motion *in limine* was granted. The Court, however, warned, "In the event that the legal arguments contained in the government's motions to dismiss are rejected, additional hearings will be scheduled and the petitioners will be allowed to present relevant evidence in support of their claims." May 27, 1993 Order Modifying May 12, 1993 Order Setting Hearings on "Branch" Petitions at 3.

All petitioners were invited, though not required, to participate in the oral argument scheduled for June 21, 22, and 23, 1992. All petitioners addressed herein except for the French and Turkish branches accepted the invitation.

DISCUSSION

Title 18, United States Code, § 1963 sets forth an orderly procedure by which third parties seeking to recover interest in forfeited property may obtain judicial resolution of their claims. The provision granting standing to parties seeking to amend an order of forfeiture to exclude certain property states:

> Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice..., whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property.'

18 U.S.C. § 1963 (*l*)(2). Section 1963 (*l*)(6) sets forth the substantive elements which a third party must establish to successfully obtain amendment of an order of forfeiture and provides in full:

> If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that -
>
> > (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

> (B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture under this section;
>
> the court shall amend the order of forfeiture in accordance with its determination.[7]

Only by establishing standing and satisfaction of all requisite elements of either § 1963 (*l*)(6)(A), or (B) may a party obtain judicial relief from an order of forfeiture. *See United States v. Schwimmer*, 968 F.2d 1570, 1584 (2d Cir. 1992) ("The *only* role of the District Court is to amend the order of forfeiture where a genuine property interest of the sort specified in § 1963 (*l*)(6) is demonstrated.") (emphasis in the original); *United States v. Lavin*, 942 F.2d 177, 187 (3d Cir. 1991) ("Those third parties who fall outside of the [limited avenues of relief], regardless of how sympathetic they are, must petition the Attorney General for relief.") If a third party fails to allege in its petition all elements necessary for recovery, including those relating to standing, the court may dismiss the petition without providing a hearing. *See United States v. Campos*, 859 F.2d 1233, 1240 (6th Cir. 1988);

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[7] Title 18 U.S.C. § 1963 (*l*)(6) contains exactly the same language as 21 U.S.C. § 853 (n)(6), the statute providing for forfeiture in criminal narcotics cases, and it appears that no court has interpreted these two provisions differently. Because the two subsections are identical and because of the relative dearth of caselaw interpreting and applying § 1963(*l*), the Court's opinion relies on reasoning contained in § 853 (n) cases as well as in § 1963 (*l*) cases.

United States v. Mageean, 649 F. Supp. 820, 825 (D. Nev. 1986), *aff'd without opinion*, 822 F.2d 62 (9th Cir. 1987); S. Rep. No. 225, 98th Cong., 2d Sess., *reprinted in* 1984 U.S. Code Cong. & Ad. News 3374, 3391.

In its motions to dismiss the branch petitions, the government argues, *inter alia*, that because branches of BCCI Overseas are not separately incorporated, they cannot, as a matter of federal law, be considered separate juridical entities. Consequently, the government contends, the branches must be declared "defendants" within the meaning of § 1963(*l*)(2) and are therefore barred from asserting interests in property ordered forfeited. Most of the petitioners assert that foreign law, rather than federal common law, should govern whether they are separate entities and claim that under the laws of their domiciles, they maintain existences wholly separate from BCCI Overseas. In the alternative, the petitioners argue that under accepted principles of federal and state common law, whether a branch of a bank is an entity separate from its parent is a complex question of fact which can only be resolved after the presentation of evidence relating to numerous factors. Bangladesh and Davies argue that issues relating to the status of bank branches are irrelevant to resolution of their petitions since they claim interests as a sovereign nation and a representative of general depositors and creditors rather than as branches of BCCI Overseas.

Because the meaning of a term contained in a federal criminal statute is at issue, and because Congress has not expressed an unambiguous intent to the contrary, federal common law, rather than the law of the foreign countries in which the branches are domiciled, will govern whether the petitioners are "defendants" for purposes of determining whether they have standing to file petitions. *See Taylor v. United States*, 495 U.S.

575, 110 S.Ct. 2143, 2154 (1990) (state definitions of "burglary" should not control whether a federal sentencing enhancement provision should apply); *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 119-20, 103 S.Ct. 986, 995 (1983) ("application of federal legislation is nationwide and at times the federal program would be impaired if state law were to control"); *United States v. Turley*, 352 U.S. 407, 411, 77 S.Ct. 397, 399 (1957) ("[I]n the absence of a plain indication of an intent to incorporate diverse state laws into a federal criminal statute, the meaning of the federal statute should not be dependent on state law.").

Under federal common law, whether a bank branch should be treated as an independent entity and whether that question is a matter of fact or law depends upon the context of the litigation in which the issues arise. For example, in actions involving two different branches of the same parent, courts have held that the branches can be considered entities independent of each other for specific purposes. *See, e.g., Det Bergenske Dampskibsselskap v. Sabre Shipping Corp.*, 341 F.2d 50, 53-54 (2d Cir. 1965) ("[A] warrant of foreign attachment,
served on a branch office located in the Eastern District of New York, is ineffective to garnishee a bank account at a branch office of the same bank located in the Southern District of New York."); *United States v. Harvey*, 1989 W.L. 109079 (S.D. Fla.) (whether Miami agency of BCCI should be considered separate from Panamanian branch of BCCI for purposes of enforcing tax levy was an issue of fact which prevented resolution of the dispute on summary judgment); *McGrath v. Agency of Chartered Bank of India, Australia & China*, 104 F. Supp. 964 (S.D.N.Y. 1952) (New York and German branches considered different entities for purposes of determining whether setoff was available), *aff'd without opinion*, 201 F.2d 368 (2d Cir. 1953); *Clinton Trust Co. v. Compania Azucarera Central Mabay S.A.*, 14 N.Y.S.2d

743 (Sup.Ct.N.Y.Cty. 1939) (accounts deposited in a branch in Cuba could not be considered to be property situated with a branch located in New York). More significant to this litigation, however, are the cases involving disputes over the legal relationship between a branch and its parent. The substantial majority of those cases hold that though a parent may be able contractually to shield itself from certain debt obligations incurred by its branches, branches are not entities separate from their parents. *See, e.g., Trinh v. Citibank, N.A.*, 850 F.2d 1164, 1168 (6th Cir. 1988) ("[I]t is a general banking principle that the home office is *ultimately liable* on a deposit placed in its foreign branch if, as here, the branch closes or otherwise wrongfully refuses to return a deposit.") (emphasis in original), *cert. denied*, 496 U.S. 912 (1990); *Edelmann v. Chase Manhattan Bank, N.A.*, 861 F.2d 1291, 1304 (2d Cir. 1988) ("When a branch is closed, the depositor has a claim against the parent bank; the situs of the debt represented by the deposit 'springs back' to the home office. Ultimate liability for the debt of a branch rests upon the parent bank."); *Vishipco Line v. Chase Manhattan Bank, N.A.*, 660 F.2d 854, 863 (2d Cir. 1981) ("By operating in Saigon through a branch *rather than through a separate corporate entity*, Chase accepted the risk that it would be liable elsewhere for obligations incurred by its branch.") (emphasis added), *cert. denied*, 459 U.S. 976 (1982). These cases rely in substantial part on the landmark case of *Sokoloff v. National City Bank of New York*, 224 N.Y.S. 102, 114 (Sup.Ct.N.Y.Cty. 1927), *aff'd without opinion*, 227 N.Y.S. 970, (N.Y.App.Div.1), *aff'd*, 250 N.Y. 69 (1928), which held:

> Where a bank maintains branches, each branch becomes a separate business entity, with separate books of account. A depositor in one branch cannot issue checks or drafts upon another

> branch or demand payment from such other branch, and in many other respects the branches are considered separate corporate entities and as distinct *from one another* as any other bank. *Nevertheless, when considered with relation to the parent bank, they are not independent agencies*; they are, what their name imports, merely branches, and are subject to the supervision and control of the parent bank, and are instrumentalities whereby the parent bank carries on its business, ... and their property and assets belong to the parent bank, although nominally held in the names of the particular branches. *Ultimate liability for a debt of a branch would rest upon the parent bank.*

(emphasis added and citations omitted).[8] Given that the issue currently facing this Court involves relationships between branches and their parent rather than relationships between the branches themselves, it is appropriate to conclude, based on *Sokoloff* and its progeny, that branches of BCCI Overseas are part of that "defendant" as a matter of law and that the branches therefore do not have standing under § 1963(*l*)(2).

Lending strong support to this determination are

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[8] Although BCCI Overseas was not chartered by this country, it is worth noting that the United States chartered banks and their branches have been declared to be single entities under the Federal Foreign Banking Law, codified at 12 U.S.C. §§ 601 et seq. See, e.g., First Nat'l Bank of Boston (International) v. Banco Nacional de Cuba, 658 F.2d 895, 900 (2d Cir. 1981) ("[F]ederal law regards a national bank and its branches as a single entity."), *cert. denied*, 459 U.S. 1091, 103 S. Ct. 579, 74 L. Ed. 2d 939 (1982).

analogous cases which hold that unincorporated divisions of a parent corporation cannot be indicted or sued. *See United States v. ITT Blackburn Co., a Div. of ITT*, 824 F.2d 628, 631-32 (8th Cir. 1987) (acknowledging that "an unincorporated division cannot be sued or indicted, as it is not a legal entity," and recognizing that "when a corporation is properly made a party to litigation, then any unincorporated division may also be liable"); *Western Beef, Inc. v. Compton Inv. Co.*, 611 F.2d 587, 590 (5th Cir. 1980) (unincorporated division "not a separate legal entity wholly apart form its owner"); *In re Sugar Industry Antitrust Litigation*, 579 F.2d 13, 18 (3d Cir. 1978) ("A division of a corporation is not a separate entity but is the corporation itself."); *Salzstein v. Bekins Van Lines, Inc.*, 747 F. Supp. 1281, 1282 n. 1 (N.D. Ill. 1990) ("[B]y definition a corporate division is not a separate legal entity and hence is not suable ...."). Because unincorporated divisions and their parents cannot be considered separate entities for the purpose of indictment, it would be anomalous to consider them separate entities for the purpose of determining standing to file a petition pursuant to § 1963(l).[9]

Although the Davies petition was filed on behalf of depositors of the Sierra Leonean branch rather than on behalf of the branch itself, the petition is defective because general depositors, as unsecured creditors of a defendant, cannot assert valid claims to forfeited funds.[10] Simply put, unsecured creditors

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[9] Because of the dismissal of the branch petitions for lack of standing it is unnecessary to address the government's other asserted bases for dismissal, including Paraguay's failure to file a petition responsive to the July 29, 1993 Order of Forfeiture.

[10] In light of the conclusion that depositors cannot successfully seek amendment of an order of forfeiture, it is unnecessary to resolve the government's assertion that Davies cannot file claims on behalf

like the Sierra Leonean depositors cannot assert interests "in property which has been ordered forfeited"

as required by § 1963(*l*)(2), cannot claim interests in property that "[were] vested in the petitioner rather than the defendant or [were] superior to any right, title, or interest of the defendants" as required by § 1963(*l*)(6)(A), and cannot be considered "bona fide purchaser[s] for value of the right[s], title[s], or interest[s] in the property" as required by § 1963(*l*)(6)(B). *See* Order Dismissing the August 21, 1992 Petition of Anton Seravaseiyar, the August 25, 1992 Petition of Ahmed Shahriar, the June 22, 1992 Petition of Aqueel Ahmed Siddiqi, and the September 8, 1992 Petition of Margaret Mary White, *United States v. BCCI Holdings (Luxembourg), S.A.*, ___ F. Supp. ___ (D.D.C. 1993); Order Addressing the Government's Motion to Dismiss Petitions of Depositors and Additional Depositors, *United States v. BCCI Holdings (Luxembourg), S.A.*, 814 F. Supp. 106 (D.D.C. 1993).

Notwithstanding the fact that this Court has previously held that interests arising from constructive trusts may be recognized under § 1963(*l*), it is inappropriate to impose such a trust in favor of the Sierra Leonean depositors. One of the most significant motivating factors behind the Court's approval of the plea agreement between the United States and BCCI was the fact that the agreement provided for the creation of a worldwide victims fund so that "innocent victims of BCCI's wrongdoing can recover at least a portion of lost assets in as fair a manner as possible -- equitable, orderly, and expeditious." Transcript of Plea Acceptance and Sentence, January 24, 1992, at 6. The Court expressly recognized, "Because the fund will be administered on a global scale through unified proceedings,

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of others asserting rights, titles or interests in forfeited property.

piecemeal and unfair distribution can be avoided." *Id.* Imposition of a constructive trust in favor of the Sierra Leonean depositors or any other group of depositors could cause disruption of the global liquidation proceedings currently underway. Besides the practical consideration relating to the difficulties of adjudication whether each of the more than 4,500 depositors can establish that they made deposits and that such deposits were forfeited by this Court, imposing a trust would significantly harm the abilities of other BCCI creditors to recover fair portions of lost funds. Consequently, and in accordance with the rationales of *Sisters of the Presentation of the Blessed Virgin Mary of Aberdeen, South Dakota v. Nat'l Credit Union*, 961 F.2d 733 (8th Cir. 1992); *Downriver Community Fed. Credit Union v. Penn Square Bank*, 879 F.2d 754 (10th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990); and *Bruneau v. Fed. Deposit Ins. Corp.*, 785 F. Supp. 585 (E.D.La.), *aff'd*, 981 F.2d 175 (5th Cir. 1992), a constructive trust in favor of the depositors will not be imposed. Davies' petition is therefore dismissed.

As a sovereign nation, Bangladesh cannot be considered part of BCCI Overseas, and the United States' argument that the petitioner does not have standing because it is a "defendant" within the meaning of § 1963(*l*)(2) is therefore rejected. Besides raising the standing issue, however, the government has also contended that the petitions of Bangladesh should be dismissed because it cannot establish rights, titles or interests in the Bangladeshi branch accounts of BCCI Overseas which were "vested in the petitioner rather that the defendant or [were] superior to any right, title or interest of the defendant" as required by § 1963(*l*)(6)(A).

In its motions to dismiss and at oral argument, the government conceded that state law, rather than federal law,

determines whether a petitioner has a superior or vested legal right, title or interest in forfeited property as required by § 1963(*l*)(6)(A). United States' Motion to Dismiss the L Claims of BCCI(O)'s Foreign Branches filed May 1, 1992, at 19-20; Transcript of June 22, 1993 hearing at 17. In addition, the government and Bangladesh agree that the law of the locality with the strongest interest in the litigation should be applied to determine the validity of the petitioners' asserted property interests. The Court concurs. *See In re Koreag, Controle et Revision, S.A.*, 961 F.2d 341, 350 (2d Cir. 1992) ("The federal common law choice-of-law rule is to apply the law of the jurisdiction having the greatest interest in the litigation."); *Wells Fargo Asia Ltd v. Citibank N.A.*, 936 F.2d 723, 726 (2d Cir. 1992) (same), *cert. denied*, 112 S.Ct. 2990 (1992). The parties disagree, however, as to whether the law of the state of New York or of Bangladesh should apply.

Upon careful consideration of the interests of both jurisdictions,
it is concluded that Bangladeshi law should apply to determine the validity of the petitioners' asserted property interests. At this stage of the litigation, the main issue to be resolved hinges on the relationship between the government of Bangladesh and Bangladeshi branches of a bank incorporated under the laws of the Cayman Island. Based on this fact alone, Bangladesh clearly has a much stronger interest in the application of its law, notwithstanding the fact that the funds in dispute were once located in New York.[11]

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[11] In light of the Orders directing the United States Marshals to seize the funds at issue, it is unlikely that assets are presently located in New York.

Because the Court previously denied Bangladesh the opportunity to present relevant expert testimony regarding foreign law at oral argument, and because its petitions have survived the government's threshold contentions relating to standing, principles of fairness dictate that it be allowed to present such testimony at a hearing. Accordingly, the government's motions to dismiss Bangladesh's petitions are denied, and a brief hearing on the validity and sufficiency of petitioner's asserted interests will be held in accordance with § 1963(*l*)(5). Bangladesh and the United States will be allowed to present evidence and witnesses, including experts on Bangladeshi law, in support of their cases and may cross-examine witnesses presented by the opposing side.

CONCLUSION

For reasons stated above, it is hereby

ORDERED that the petitions filed by the following claimants on the following dates are dismissed:

The Central Bank of Paraguay, filed March 19, 1992;

Raymond Davies on behalf of all BCCI depositors in Sierra Leone, filed on April 27, 1992;

Carlos F. Sanchez Fabrega as Liquidator of BCCI (Overseas) Limited (en Liquidacion) in Panama, filed March 19, 1992;

Andre Forde and Michel Chavaux, Administrators of BCCI (Overseas) Limited in

France and Monaco, filed March 19 1992;

Hussein Abdel Rahim, et al., Joint Official Liquidators for BCCI (Overseas) Limited, Sudan, filed on May 11, 1992

Antonio dos Santos Ramos and Antonio Maria Ho as the Liquidation Commission for BCCI (Overseas) Limited, Macau, filed April 12, 1992; and

Abdullah Soydas, as Liquidator of BCCI (Overseas) Limited, Istanbul, Izmir and Mersin, Turkey, filed June 10, 1992.

It is FURTHER ORDERED that the United States' motions to dismiss the April 3, 1992 and September 4, 1992 petitions of the **Government of the People's Republic of Bangladesh and Bangladesh Bank** are denied. After conferring with each other, counsel for the United States and Bangladesh shall file, on or before September 10, 1993, a joint submission advising the Court of the number and identity of the witnesses each side intends to call at the final hearing and briefly summarizing the anticipated testimony of each witness. The joint submission shall also estimate the amount of time each side believes necessary to fairly *but concisely* present its position at the hearing. Upon receipt of the Joint submission, the Court will schedule a hearing date.

IT IS SO ORDERED

August 19, 1993

/s/JOYCE HENS GREEN
United States District Judge

APPENDIX F - OCTOBER 29, 1993 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ORDER ENTERING FINAL JUDGMENT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 91-0655 (JHG)

UNITED STATES OF AMERICA,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., et al.,

BEFORE: GREEN, District Judge

Opinion by: The Hon. Joyce Hens Green

This matter came before the Court on the Joint Motion of the United States of America and the Court-Appointed Fiduciaries for Final Judgment with respect to 33 petitions filed by third parties pursuant to 18 U.S.C. 1963 (1). The 33 petitions, which are set forth on Exhibit A to the Joint Motion, have all been dismissed by the Court, leaving no matter regarding any of those petitions pending before the Court.

For the reasons set forth in the Joint Motion, the Court

has determined that there is no just reason for delay in the entry of final judgment with respect to the 33 petitions. Accordingly, the Court hereby directs that final jugdment be entered dismissing each of the claims set forth in Exhibit A to the Joint Motion, which shall be attached to and made a part of this order.

IT IS SO ORDERED.

October 29, 1993

/s/ JOYCE HENS GREEN
United States District Judge

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Exhibit A

Criminal No. 91-0655 (JHG)

09/20/93

Claims Dismissed as of September 20, 1993

** Category: Depositor

Claimant	Round	Amount	Date Filed	Action
Cox, Arthur, W.R.	1	2300.00	02/13/92	Dismissed 1/7/93
Hanson, Harold E.	1	11482.13	03/11/92	Dismissed 1/7/93
Shekarchian, S.A. Reze	1	1215027.20	03/09/92	Dismissed 4/23/93
Bolton, Gerald	1	100000.00	03/19/92	Dismissed 1/7/93
Hoque, M. Zahidul	1	1288.66	03/27/91	Dismissed 1/7/93
White, Margaret	1	75333.32	04/29/92	Dismissed 1/7/93
Seravaseiyar, Anton	1	2046.00	04/27/92	Dismissed 1/7/93
Seravaseiyar, Anton	2	2000.00	08/21/92	Dismissed 8/19/93
White, Margaret	2	75333.32	09/08/92	Dismissed 8/19/93
Shahriar, Ahmed	2	700.00	08/25/92	Dismissed 8/19/93
Siddiqui, Aqeel Ahmed	2	28500.00	06/22/92	Dismissed 8/19/93
** Subtotal**		1514009.63		

Claims Dismissed as of September 20, 1993

** Category: Tort Claims

Claimant	Round	Amount	Date Filed	Action
California Class Action	1	347000000.00	03/10/92	Dismissed 8/19/93
Scarfone, Lee and Patricia	1	5000000.00	03/16/92	Dismissed 2/23/93
Panama (Republic of)	1	23124193.00	03/13/92	Dismissed 8/19/93
Sturge, Nicholas Collwyn	1	9000000.00	03/26/92	Dismissed 5/18/93
Central Reserve Bank of Peru	1	3000000.00	04/27/92	Dismissed 2/22/93
Scarfone, Lee and Patricia	2	5000000.00	09/01/92	Dismissed 2/23/93
Central Bank of Peru	2	3000000.00	09/02/92	Dismissed 2/22/93
California Class Action	2	104000000.00	09/10/92	Dismissed 8/19/93
Subtotal	2	499124193.00		

Claims Dismissed as of September 20, 1993

Claimant	Round	Amount	Date Filed	Action
** Category: Separate Entity				
Central Bank of Paraguay	1	639404.78	03/19/92	Dismissed 8/19/93
Panamanian Liquidator	1	8547687.42	03/19/92	Dismissed 8/19/93
Japanese Liquidator	1	85219226.14	03/20/92	Dismissed 5/1/92
French Liquidator	1	857082.72	03/19/92	Dismissed 8/19/93
Macao Liquidator	1	1656874.34	04/14/92	Dismissed 8/19/93
Sierra Leone Conservator	1	2056883.83	04/28/92	Dismissed 8/19/93
Sudanese Liquidator	1	70251.94	04/11/92	Dismissed 8/19/93
Turkish Liquidator	1	2148337.29	06/11/92	Dismissed 8/19/93
Subtotal		101826748.46		

Claims Dismissed as of September 20, 1993

** Category: Tort Claims

Claimant	Round	Amount	Date Filed	Action
Industrial Bank of Japan	1	32000000.00	03/17/92	Dismissed 8/19/93
Bank of New York	1	6603104.00	03/06/92	Dismissed 8/19/93
Shaw, Pittman, Potts & Towbridge	1	296484.34	04/01/92	Dismissed 8/19/93
Credit Suisse	1	25565518.37	04/23/92	Dismissed 8/19/93
Industrial Bank of Japan	1	32000000.00	09/09/92	Dismissed 8/19/93
Shaw, Pittman, Potts & Towbridge	1	296484.34	09/10/92	Dismissed 8/19/93
Subtotal		101826748.46		
Total		699226542.14		